



**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF

Matteo Iron and Metal, Inc. Superfund Site :

West Deptford, New Jersey :

James Matteo and Sons, Inc.,

Respondent :

**ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION**

U.S. EPA Region 2
CERCLA Docket No. 02-2006-2013

Proceeding Under Section 106(a) of the
Comprehensive Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. § 9606(a).

I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and James Matteo and Sons, Inc. ("Respondent"). This Settlement Agreement provides for the performance of a removal action by Respondent, at or in connection with the Matteo Iron and Metal, Inc. Site located in West Deptford, Gloucester County, New Jersey (the "Site").

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Section 106(a) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. §9606(a), and delegated to the Administrator of EPA on January 23, 1987, by Executive Order No. 12580 (52 Federal Register 2926, January 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-A and 14-14-B and to the Director of the Emergency and Remedial Response Division in Region II by Regional Delegation R-1200, dated November 23, 2004.

3. EPA has notified the State of New Jersey (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this

Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that it will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon Respondent and Respondent's successors and assigns and all other person(s) and entities who are under the direct or indirect control of the Respondent who are involved in the performance of the Work required by this Agreement. Respondent shall instruct its officers, directors, employees and agents involved in the performance of the work required by this Settlement Agreement to cooperate in carrying out Respondent's obligations under this Settlement Agreement. Respondent's officers, directors, employees, and agents involved in the performance of the Work required by this Settlement Agreement shall take all necessary steps to accomplish the performance of said Work in accordance with this Settlement Agreement. Any change in ownership or corporate status of Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that its contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided herein, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 *et seq.*

b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

c. "Effective Date" shall be the effective date of this Settlement Agreement as set forth in Section XXVII.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

g. "Settlement Agreement" shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

h. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

i. "Parties" shall mean EPA and Respondent.

j. "Respondent" shall mean James Matteo and Sons, Inc., also trading as, Matteo Iron and Metal, Inc.

k. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

l. "Site" shall mean the Matteo Iron and Metal Inc., Inc. Site, encompassing approximately 80 acres, located in West Deptford, Gloucester County, New Jersey and further designated as Lot 2, Blocks 128 and 325. The mailing address for the Site is 1692 Crown Point Road, Thorofare, New Jersey.

m. "State" shall mean the State of New Jersey.

n. "Waste Material" means (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. §9601(14); (2) any "pollutant or contaminant" under Section 101(33) of CERCLA, 42 U.S.C. §9601(33); (3) any "solid waste" under Section 1004(27) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. §6903(27); and (4) any mixture containing any of the constituents noted in (1), (2) or (3), above.

o. "Work" shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. EPA'S FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Site is located at 1692 Crown Point Road, Thorofare, Gloucester County, New Jersey and is further designated as Lot 2, Blocks 128 and 325.

9. The current owner of record for the Site is James Matteo and Sons, Inc. Site operations included a junkyard, recycling facility, and an unregistered landfill. Currently, Respondent operates a scrap metal recycling facility at the Site doing business as Matteo Iron and Metal, Inc.

10. Crushed battery casings are present throughout most of the northern portion of the Site. The casings visibly protrude from the ground surface, including along the banks of Hessian Run. Casings are also evident in the tidal marshlands.

11. The Site is adjacent to a residential trailer park. Trails are present throughout the Site from off-site areas. There are at least seven established trails into the southern portion of the Site. Most of these trails lead directly to or near the trailer park. In addition, the central portion of the Site, where the crushed battery casings are buried along the Hessian Run, is accessible via land from the rear of the scrap yard.

12. The State conducted a comprehensive remedial investigation of the Site from approximately September 2000 to October 2002. The analytical data revealed elevated levels of lead in the soil throughout the battery casing burial area, the scrap yard, and the adjoining creek sediments around the Site. Additionally, there are noncontiguous spots of soil contamination throughout the Site. Polychlorinated biphenyls ("PCBs"), antimony, copper, arsenic, cadmium, mercury, nickel, and zinc were also detected in the soil at some locations at levels exceeding state residential and nonresidential standards. There were also sporadic detections of polyaromatic hydrocarbons (PAHs) and volatile organic compounds (VOCs) in the shallow subsurface soil. The analytical results indicate that a variety of CERCLA designated hazardous substances, as listed in 40 C.F.R. Table 302.4, are present at the Site. Surface soil sampling conducted at the Site by EPA in April 2005 generally confirmed previous State sample results in the landfill and battery casing burial area with respect to lead contamination.

13. The Site is currently owned by the Respondent. As the current owner of the facility, Respondent is a "potentially responsible party" within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. §9607(a)(1).

14. Respondent is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

15. The Site constitutes a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Respondent is potentially liable under one or more subsections of Section 107(a) of CERCLA, 42 U.S.C. §9607(a), for conditions at the Site and for response costs incurred and to be incurred by EPA relating to the Site.

17. Many of the contaminants found at the Site including, but not limited to, lead, PCBs, antimony, copper, arsenic, cadmium, mercury, nickel, and zinc are "hazardous substances" as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. The presence of hazardous substances at the Site and their past, present or potential migration from the Site, constitute actual and/or threatened "releases" as defined in Section 101(22) of CERCLA, 42 U.S.C. §9601(22).

19. On September 30, 2005, the Director of the Emergency and Remedial Response Division for EPA Region 2 signed an Action Memorandum for the Site to facilitate Federal funding for a removal action if the Respondent decides not to perform such action voluntarily.

V. DETERMINATIONS

20. The conditions present at the Site constitute a threat to public health, welfare, or the environment based upon factors set forth in Section 300.415(b)(2) of the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"). These factors include, but are not limited to, the following conditions:

a. Actual or potential exposure to nearby human populations, animals or the food chain from hazardous substances or pollutants or contaminants;

b. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

c. Actual or potential exposure to nearby human populations from hazardous substances, pollutants or contaminants; and

d. Weather conditions that may cause hazardous substances or pollutants or contaminants to migrate or be released.

21. The actual or threatened release of hazardous substances at and from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

22. The actions required by this Settlement Agreement are necessary to protect the public health or welfare or the environment, are in the public interest, and are consistent with CERCLA and the National Contingency Plan ("NCP"), 40 C.F.R. Part 300.

23. EPA has determined that a removal action at this Site is necessary to address the immediate threat to human health and the environment posed by the presence of hazardous substances located at the Site.

VI. SETTLEMENT AGREEMENT

24. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the administrative record for this Site, it is hereby ordered and agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

25. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 14 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 7 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 7 days of EPA's disapproval.

26. Within 7 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 7 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by the Respondent.

27. EPA has designated Nicholas Magriples of the Emergency and Remedial Response Division, as its On-Scene Coordinator ("OSC").

28. Respondent shall have the right to change their respective designated Project Coordinator. Respondent shall notify EPA 7 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

29. Respondent shall perform, at a minimum, all actions necessary to implement the actions detailed in this Settlement Agreement. The time-critical actions to be implemented generally include, but are not limited to:

- a. Completion of a survey of the property boundaries for the properties located at 1692 Crown Point Road, Thorofare, Gloucester County, New Jersey and further designated as Lot 2, Blocks 128 and 325, by a New Jersey licensed land surveyor. This would include placement of boundary markers to allow for placement of a fence inside of the identified boundary markers, as discussed below.
- b. Erection of a galvanized chain-link fence to run: 1) along the entire southern property boundary beginning at Crown Point Road and tying in to the southern end of an existing fence line of the Matteo Iron and Metal facility, and 2) along the northeastern property boundary tying in to an existing fence at the alternative entrance on Crown Point Road near Hessian Run and connecting to an existing fence line of the Matteo Iron and Metal facility. The fence should be a minimum of seven feet in height.
- c. Placement of warning signs along the entire fence line.
- d. Restoration of any property other than the Respondent's property impacted from the fence installation.
- e. Preparation and implementation of a plan to restrict access and direct contact by customers and the general public (and their vehicles) to contaminated portions of the area where Matteo Iron and Metal, Inc. operates a scrap yard using either engineering controls and/or through operational changes.
- f. Preparation of a maintenance plan for items b, c, and e of this Paragraph and implementation of the plan once the time-critical actions have been completed. The plan shall include in detail, but not be limited to, the inspections that will be conducted, the frequency of the inspections, and the methods that will be implemented to ensure that the integrity of the Work completed under this Settlement Agreement is maintained.

30. Work Plan and Implementation.

- a. Within 21 days after the Effective Date, Respondent shall submit to EPA for approval a draft Work Plan for performing the removal action generally described in Paragraph 29 above. It should also include the proposed specifications for the fence and warning signs. The draft Work Plan shall provide a detailed description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. EPA may approve, disapprove, require revisions to, or modify the draft Work Plan in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan within 7 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plan as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement. If EPA disapproves or otherwise requires any modifications to any plan, report or other item required to be submitted to EPA for approval pursuant to this Agreement and Order, Respondent shall have seven (7) days from the receipt of notice of such disapproval or the required modifications to correct any deficiencies and resubmit the plan, report, or other written document to EPA for approval, unless a shorter or longer period is specified in the notice. Any notice of disapproval will include an explanation of why the plan, report, or other item is being disapproved. Respondent shall address each of the comments and resubmit the plan, report, or other item with the required changes within the time stated above. At such time as EPA determines that the plan, report, or other item is acceptable, EPA will transmit to Respondent a written statement to that effect. If any resubmitted plan, report, or other item, or portion thereof, is disapproved by EPA, EPA may again direct Respondent to make the necessary modifications thereto, and/or EPA may amend or develop the item(s) and recover the costs from Respondent of doing so. Settling Party shall implement any such item(s) as amended or developed by EPA.

c. Commencement of Work. Within fourteen (14) days after EPA's approval of the Work Plan, Respondent shall commence implementation of the EPA-approved Work Plan. Respondent shall fully implement the EPA-approved Work Plan in accordance with the terms and schedule therein and in accordance with this Agreement. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan developed hereunder until receiving written EPA approval pursuant to Paragraph 30(b).

31. Health and Safety Plan. Within 21 days after the Effective Date, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the removal action.

32. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality

control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. As guidance for QA/QC and sampling, Respondent shall follow, as appropriate, the Uniform Federal Policy for Implementing Quality Systems (UFP-QS), EPA-505-F-03-001, March 2005; Uniform Federal Policy for Quality Assurance Project Plans (UFP-QAAP), Parts 1, 2, and 3, EPA-505-B-04-900A, B, and C, March 2005; and other guidance documents referenced in the aforementioned guidance documents. The UFP documents may be found at: http://www.epa.gov/fedfac/documents/intergov_qual_task_force.htm. In addition, the guidance and procedures located in the EPA Region 2 DESA/HWSB web site: <http://www.epa.gov/region02/qa/documents.htm>, as well as other OSWER directives and EPA Region 2 policies should be followed as appropriate.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 7 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

33. Post-Removal Site Control. In accordance with the Work Plan schedule, or as otherwise directed by EPA, Respondent shall submit a proposal for post-removal site control consistent with Section 300.415(f) of the NCP and OSWER Directive No. 9360.2-02. Upon EPA approval, Respondent shall implement such controls and shall provide EPA with documentation of all post-removal site control arrangements.

34. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement every 14th day after the date of receipt of EPA's approval of the Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 3 copies of all plans, reports or other submissions required by this Settlement Agreement, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form. The submissions shall be sent to

the following addresses:

2 copies to:

U.S. Environmental Protection Agency
Removal Action Branch
2890 Woodbridge Avenue
Bldg. 209
Edison, New Jersey 08837
Attention: Nick Magriples

1 copy to:

U.S. Environmental Protection Agency
Office of regional Counsel
290 Broadway, 17th floor
New York, New York 10007-1866
Attention: Damaris Urdaz Cristiano, Esq.

c. Respondent who owns or controls property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondent who owns or controls property at the Site also agrees to require that its successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

35. Final Report. Within 30 days after completion of all Work required by this Settlement Agreement, Respondent shall submit for EPA review and approval a final report summarizing the actions taken to comply with this Settlement Agreement. The final report shall include a synopsis of all work performance under this Agreement, a detailed description of all EPA-approved modifications to the Work Plan which occurred during the Respondent's performance of the Work required under this Agreement, a good faith estimate of total costs or a statement of actual costs incurred in complying with the Settlement Agreement, a listing of quantities and types of materials removed off-Site or handled on-Site, a discussion of removal and disposal options considered for those materials, a listing of the ultimate destination(s) of those materials, a presentation of the analytical results of all sampling and analyses performed, and accompanying appendices containing all relevant documentation generated during the removal action (e.g., manifests, invoices, bills, contracts, and permits). The final report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations."

36. Maintenance Reports

After Respondent receives a written Notice of Completion of Work, Respondent shall provide episodic written maintenance reports to EPA for a period of one year after any maintenance activities are conducted at the Site for Work completed under this Agreement.

37. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state. This notification shall take place at least five (5) days prior to the shipment.

ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the removal action. Respondent shall provide the information required by Paragraph 21(a) and 21(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence. This notification to EPA shall take place at least five (5) days prior to shipment.

IX. SITE ACCESS

38. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by the Respondent, such Respondent shall,

commencing on the Effective Date, provide EPA, and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

39. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use its best efforts to obtain all necessary access agreements within 7 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using its best efforts it is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing its efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described herein, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access.

40. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

41. Respondent shall provide to EPA, upon request, copies of all documents and information within its possession or control or that of its contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, its employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

42. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

43. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, they shall provide EPA

with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

44. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

45. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXV (Notice of Completion of Work), Respondent shall also instruct its contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

46. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent assert such a privilege, they shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

47. Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State

or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

XII. COMPLIANCE WITH OTHER LAWS

48. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable local, state, and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws.

49. Except as provided in Section 121(e)(1) of CERCLA, 42 U.S.C. § 9621(e)(1), and the NCP, no permit shall be required for any portion of the Work required hereunder that is conducted entirely on-site. Where any portion of the Work requires a federal or state permit or approval, Respondent shall submit timely applications and shall take all other actions necessary to obtain and to comply with all such permits or approvals. This Settlement Agreement is not, nor shall it be construed to be, a permit issued pursuant to any federal or state statute or regulation.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

50. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in Settlement Agreement to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his unavailability, the Chief of the Removal Action Branch of the Emergency and Remedial Response Division at 732-321-6658 of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA for all costs of the response action not inconsistent with the NCP.

51. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section

103(c) of CERCLA, 42 U.S.C. § 9603(c), and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

52. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. FORCE MAJEURE

53. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to its contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

54. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 48 hours of when Respondent first knew that the event might cause a delay. Within 7 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

55. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees

that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVI. STIPULATED PENALTIES

56. If Respondent fails, without prior EPA approval, to comply with any of the requirements or time limits set forth in or established pursuant to this Settlement Agreement, and such failure is not excused under the terms of Section XV, above (Force Majeure), Respondent shall, upon demand by EPA, pay a stipulated penalty to EPA in the amount indicated below

57. For all requirements of this Settlement Agreement, stipulated penalties shall accrue in the amount of \$500 per day, per violation, for the first fourteen (14) days of noncompliance; \$1,000 per day, per violation, for the 15th through 30th day of noncompliance; and \$1,500 per day, per violation, for the 31st day of noncompliance and beyond.

58. Any such penalty shall accrue as of the first day after the applicable deadline has passed and shall continue to accrue until the noncompliance is corrected or EPA notifies Respondent that it has determined that it will perform the tasks for which there is non-compliance. Such penalty shall be due and payable thirty (30) days following receipt of a written demand from EPA. Payment of any such penalty to EPA shall be made, in accordance with direction provided by EPA upon request by Respondent, by electronic funds transfer with a notation of the index number of this Settlement Agreement. A letter stating the basis for the penalty, the name and address of Respondent, the name of the Site, and the EPA Region number shall accompany any such payment; a copy of the letter shall be mailed to the EPA addressees listed in Paragraph 34, above. Respondent shall pay interest on any amounts overdue under this Paragraph. Such interest shall begin to accrue on the first day that the respective payment is overdue. Interest shall accrue at the rate of interest on investments of the Hazardous Substances Superfund, in accordance with Section 107(a) of CERCLA.

59. Even if violations are simultaneous, separate penalties shall accrue for separate violations of this Settlement Agreement. Penalties accrue and are assessed per violation per day. Penalties shall accrue regardless of whether EPA has notified Respondent of a violation or act of noncompliance. The payment of penalties shall not alter in any way Respondent's obligation to complete the performance of the Work required under this Settlement Agreement.

60. Notwithstanding any other provision of this Settlement Agreement, failure of Respondent to comply with any provision of this Settlement Agreement may subject Respondent to civil penalties of up to twenty-seven thousand five hundred dollars (\$27,500) per violation per day, as provided in Section 106(b)(1) of CERCLA, 42 U.S.C. §9606(b)(1), unless such failure to comply is excused by EPA under the terms of Section XIX, above. Respondent may also be subject to punitive damages in an amount at least equal to and not more than three times the amount of any costs incurred by the United States as a result of such failure to comply with this

Settlement Agreement, as provided in Section 107(c)(3) of CERCLA, 42 U.S.C. §9607(c)(3). Should Respondent violate this Settlement Agreement or any portion thereof, EPA may carry out the required actions unilaterally, pursuant to Section 104 of CERCLA, 42 U.S.C. §9604, and/or may seek judicial enforcement of this Settlement Agreement pursuant to Section 106 of CERCLA, 42 U.S.C. §9606.

61. All payments to the EPA under this Section shall indicate that the payment is for stipulated penalties, and shall be remitted via Electronic Funds Transfer ("EFT"), along with the following information, to EPA's Account with Mellon Bank, Pittsburgh, Pennsylvania, as follows:

- i. Amount of Payment
- ii. Title of Mellon Bank to receive the payment: EPA
- iii. Account code for Mellon Bank account receiving the payment: 9108544
- iv. Mellon Bank ABA Routing Number: 043000261
- v. Name of Party making payment
- vi. EPA Index Number: CERCLA-02-2006-2013
- vii. Site/Spill Identifier Number: 02KD

To ensure that a payment is properly recorded, a letter should be sent, within one week of the EFT, which references the date of the EFT, the payment amount, that the payment is for stipulated penalties, the name of the Site, the case Index number, and the name and address of the party making payment to the United States as specified in Section XI (Notification and Reporting Requirements) and also to:

Richard Manna, Chief
Financial Management Branch
U.S. Environmental Protection Agency, Region II
290 Broadway, 29th Floor
New York, New York 10007-1866.

XVII. RESERVATIONS OF RIGHTS BY EPA

62. Nothing herein shall limit the power and authority of EPA or the United States to take, direct, or Order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing herein shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law. EPA reserves the right to bring an action against Respondent under Section 107 of CERCLA, 42 U.S.C. §9607, for recovery of any and all response costs incurred and/or to be incurred by the United States related to the Site, including response costs related to

this Settlement Agreement, which are not reimbursed by Respondent.

63. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. liability for all response costs incurred and to be incurred by the United States and/or EPA relating to the Site which are not reimbursed by Respondent;
- b. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

64. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, are seriously or repeatedly deficient or late in its performance of the Work, or is implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XVIII. COVENANT NOT TO SUE BY RESPONDENT

65. Respondent covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work or this Settlement Agreement, including, but not limited to:

- a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

- b. any claim arising out of the Work or arising out of the response actions for which the Past Response Cost or Future Response Costs have or will be incurred, including any claim under the United States Constitution, the New Jersey State Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or
- c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work or payment of Past Response Costs or Future Response Costs.

66. These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 63, but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

67. Nothing in this Settlement Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XIX. OTHER CLAIMS

68. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent or Respondent's employees, agents, contractors, or consultants in carrying out any action or activity pursuant to this Settlement Agreement. The United States or EPA shall not be held out as or deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

69. Nothing in this Settlement Agreement constitutes or shall be construed as a satisfaction of or release from any claim or cause of action the United States and/or EPA may have at present or which may arise in the future against Respondent or any person not a party to this Settlement Agreement for any liability under CERCLA, other statutes, or the common law, including but not limited to any claims of the United States for injunctive relief, costs, damages, and interest under Sections 106(a) and 107 of CERCLA, 42 U.S.C. §§9606(a) and 9607. Nothing herein shall constitute a finding that the current owner of the Site or any other person is not a responsible party under CERCLA with respect to the release and/or threatened release of hazardous substances at and from the Site.

70. Nothing in this Settlement Agreement shall affect any right, claim, interest, defense, or cause of action of any party hereto with respect to third parties.

71. Nothing in this Settlement Agreement shall be construed to constitute

preauthorization under Section 111(a)(2) of CERCLA, 42 U.S.C. §9611(a)(2), and 40 C.F.R. 300.700(d).

72. Respondent hereby waives any rights it may have to seek reimbursement pursuant to Sections 106(b)(2), 111 and/or 112 of CERCLA, 42 U.S.C. §§9606(b)(2), 9611, 9612, or any other provision of law, either directly or indirectly, from EPA or the Hazardous Substance Superfund of costs incurred by Respondent in complying with this Settlement Agreement.

XX. CONTRIBUTION

73. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. §9613(f)(2), and that the Respondent is entitled, as of the date Respondent receives written notice of completion of the work from EPA pursuant to Section XXV, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(h)(4) for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement is the "Work" required by this Settlement Agreement. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B), pursuant to which the Respondent has, as of the date Respondent receives written notice of completion of the work from EPA, resolved its liability to the United States, for the "Work" required by this Settlement Agreement.

74. Nothing in this Settlement Agreement precludes the United States or the Respondent from asserting any claims, causes of action or demands for indemnification, contribution, or cost recovery against any person not a party to this Settlement Agreement. Nothing herein diminishes the right of the United States, pursuant to 113(f)(2) and 113(f)(3) of CERCLA, 42 U.S.C. §§9613(f)(2) and §9613(f)(3), to pursue any such persons to obtain additional response costs or response actions and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXI. INDEMNIFICATION

75. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including, but not limited to, attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this

Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

76. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

77. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXII. INSURANCE

78. At least 7 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance with limits of \$1 million dollars, combined single limit. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that its contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXIII. FINANCIAL ASSURANCE

79. Respondent shall demonstrate its ability to complete the Work required by this Settlement Agreement and to pay all claims that arise from the performance of the Work by obtaining within fourteen (14) days of the Effective Date of this Settlement Agreement an escrow account for an amount no less than the estimated costs of the Work to be performed by Respondent under this Settlement Agreement. Monies placed in an escrow account shall be disbursed upon completion of the work as signed off by EPA. Respondent shall demonstrate

financial assurance in an amount no less than the estimated cost of the Work to be performed by the Respondent under this Settlement Agreement. If EPA determines that the financial assurances submitted by Respondent pursuant to this paragraph is inadequate, Respondent shall, within seven (7) days after receipt of notice of EPA's determination, obtain and present to EPA for approval additional financial assurances meeting the requirements of this paragraph.

XXIV. MODIFICATIONS

80. The OSC may make modifications only to plans or schedules or the Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall be effective on the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

81. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 80.

82. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXV. NOTICE OF COMPLETION OF WORK

83. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement. EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in Settlement Agreement to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVI. SEVERABILITY/INTEGRATION/APPENDICES

84. If a court issues a Settlement Agreement that invalidates any provision of this Settlement Agreement or finds that Respondent has sufficient cause not to comply with one or

more provisions of this Settlement Agreement, Respondent shall remain bound to comply with all provisions of this Settlement Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's Settlement Agreement.

85. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement.

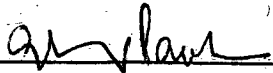
XXVII. EFFECTIVE DATE

86. This Settlement Agreement shall be effective on the date that it is signed by the EPA Region 2, Director, Emergency and Remedial Response Division, or his delegatee (the "Effective Date").

87. This Settlement Agreement may be amended by mutual agreement of EPA and Respondent. Amendments shall be in writing and shall be effective when signed by EPA. EPA's OSC does not have the authority to sign amendments to the Settlement Agreement.

88. No informal advice, guidance, suggestion, or comment by EPA's OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by Respondent shall relieve Respondent of its obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

FOR THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY



George Pavlou, Director
Emergency and Remedial Response Division
U.S. Environmental Protection Agency
Region II

DATE: 5/4/06


FOR THE RESPONDENT

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Settlement Agreement. Respondent hereby consents to the issuance of this Settlement Agreement and to its terms. The individual executing this Settlement Agreement on behalf of Respondent certifies under penalty of perjury under the laws of the United States and of the State of Respondent's incorporation that he or she is fully and legally authorized to agree to the terms and conditions of this Settlement Agreement and to bind Respondent thereto.

JAMES MATTEO & SONS, INC.

Name of Respondent


Signature

4-18-06
Date

FRANK MATTEO
Printed name of Signatory

PRESIDENT
Title of Signatory